

**Employee Benefit Plan
Employee and Matching Contributions
(Worksheet Number 11 - Determination of Qualification)**

INSTRUCTIONS - All items must be completed unless otherwise indicated. A "Yes" answer generally indicates a favorable conclusion is warranted while a "No" answer generally indicates a problem exists. Please use the space on the worksheet to explain any "No" answer. Numbers in brackets refer to EDS paragraph numbers. See Document 7334, Explanation Number 11, for guidance in completing this form. Part VII is new. Other additions since the prior version of this document have been underlined.

The technical principles in this worksheet may be changed by future regulations or guidelines.

Name of Plan

I. Applicability

Plan Reference	Yes	No	N/A
a. If the plan is a defined contribution plan—			
(i) does the plan provide for voluntary or mandatory employee contributions or matching employer contributions?			
(ii) does the plan include a section 401 (k) cash or deferred arrangement (CODA) and does the plan provide for the allocation of matching contributions or forfeitures on the basis of a participant's elective contributions?			
(If the answer to (i) or (ii) is "Yes," complete this worksheet; but if the plan contains SIMPLE provisions, skip this worksheet and complete Worksheet No. 12. <u>If the plan contains Safe Harbor CODA provisions, see Part VII of this worksheet.</u>)			
b. If the plan is a defined benefit plan, does the plan provide for voluntary employee contributions? (if "Yes," complete this worksheet.)			

II. Discrimination

a. Does the plan either:			
(i) include the actual contribution percentage test set forth in section 401 (m)(2)(A) of the Code and provide that it will meet the ACP test, or [1101, 1102 and 1103]			
(ii) incorporate the test by reference, including whether it is using the prior or current year testing method, and provide that it will meet the test? [1101, 1102 and 1103]			
b. If the terms of the plan set forth the ACP test rather than incorporate it by reference, does the plan, for purposes of this test:			
(i) take into account the actual contribution ratios of all eligible employees; [1104 and 1105]			
(ii) take the proper contributions into account; [1106 and 1107]			
(iii) treat contributions made under plans that are aggregated for purposes of sections 401 (a)(4) or 410(b) as made under a single plan; [1108]			
(iv) aggregate all plans under which a highly compensated employee (HCE) is eligible to make employee contributions or receive matching contributions for purposes of the HCE's actual contribution ratio; and [1109]			
(v) determine the ACPs of the HCEs and of all other eligible employees using the relevant plan year? [1115]			
c. Are employee and matching contributions available on a nondiscriminatory basis? [1112]			

III. Elective Contributions and Qualified Nonelective Contributions (QNECs) (Complete if the terms of the plan provide that QNECs and/or elective contributions are to be treated as matching contributions for the purposes of the ACP test.)	Plan Reference	Yes	No	N/A
a. Are the QNECs:				
(i) immediately vested, without regard to a participant's age and service; [1136, 1137, 1138 and 1139]				
(ii) distributed only under the distribution rules applicable for elective contributions under a qualified cash or deferred arrangement (CODA)? [1136, 1137, 1138 and 1139]				
b. Are QNECs and elective contributions treated as matching contributions only if the conditions described in section 1.401(m)-1(b)(5) of the regulations are satisfied? [1147]				
IV. Corrections				
a. If the plan is using the current year testing method, does it provide that, in the event it would otherwise fail the ACP test, the employer will make qualified nonelective contributions (QNECs) in order to satisfy the test? (If "No" check N/A. If "Yes," also complete question III.)				
b. Does the plan provide a mechanism by which employee and/or matching contributions of the highly compensated employees in excess of the amount allowed in the test in II.a. ("excess aggregate contributions") may be distributed or, if forfeitable, forfeited? (If "No," check N/A.)				
c. If the answer to the preceding question is "Yes"—				
(i) Is the amount of the excess aggregate contributions to be distributed to highly compensated employees (or, if forfeitable, forfeited) determined using the "ratio leveling method"? [1113 and 1114]				
(ii) Does the plan determine the amount of excess aggregate contributions only after first determining the amount of excess contributions to be treated as employee contributions due to recharacterization under a CODA in this or any other plan of the employer? [1118]				
(iii) Does the plan properly determine income to be distributed or forfeited? [1119 and 1120]				
(iv) If the plan will distribute matched employee contributions, will it also forfeit the corresponding matching contributions? [1121]				
(v) Will the distribution be made after the end of the plan year for which the excess aggregate contributions were made and no later than the end of the following plan year? [1122]				
(vi) Are distributions or forfeitures of excess aggregate contributions determined using the "dollar leveling method"? [1123]				
d. If the answer to a. and b. is N/A, does the plan contain provisions that will ensure that the ACP test is always satisfied? [1125]				

V. Definition of Highly Compensated Employee/Compensation	Plan Reference	Yes	No	N/A
a. Does the plan define highly compensated employee in accordance with section 414(q) of the Code? [1141 and 1142]				
b. For this definition, does the plan:				
(i) define determination year, look-back year, compensation, and, if applicable, top-paid group; and				
(ii) apply the aggregation rules of section 414? [1143, 1144 and 1145]				
c. Does the plan define compensation and specify the period used to determine an employee's compensation for purposes of the ACP test? [1134]				
VI. Multiple Use				
a. Does the plan include a cash or deferred arrangement? [1148] (if "Yes," go to c ; if "No," go to b.)				
b. Is any highly compensated employee eligible under the plan also eligible or potentially eligible under a cash or deferred arrangement of the employer? [1149] (If "Yes," go to c ; if "No," do not complete the rest of this worksheet.)				
c. Does the plan contain or incorporate by reference the test for determining whether there is multiple use of the alternative limitation? [1150]				
d. Does the plan provide that multiple use will be corrected and designate the manner of correction? [1151]				
VII. Safe Harbor CODA Provisions If the plan meets the requirements of this Part VII and does not provide for after-tax employee contributions, do not complete Worksheet #11 (other than Part V) because section 401(m) is satisfied. However, Worksheet #12, which contains the rules for satisfying the ADP test safe harbor, continues to apply, including notice and contribution requirements that are also applicable to the ACP test safe harbor under section 401(m)(11) of the Code. Further, Worksheet #12 contains additional rules if the plan changes from the current year ADP/ACP testing method to a safe harbor nonelective contribution method for the plan year, or from a safe harbor matching contribution method to the current year ADP (and ACP) testing method. Worksheet #12 should always be referred to in addition to this Worksheet.				
a. Does the plan provide for:				
(i) a basic matching formula, and no other matching contributions,				
(ii) an enhanced matching formula and no other matching contributions, or				
(iii) a safe harbor nonelective contribution formula and a contribution formula that satisfies (i) or (ii) above? [1152]				
b. With respect to matching contributions, does the plan:				
(i) meet the vesting requirements of section 411 of the Code with respect to matching contributions that are not needed to satisfy the ADP test safe harbor?				

	Plan Reference	Yes	No	N/A
(ii) provide that (1) matching contributions are not made with respect to after-tax employee contributions or elective contributions that in the aggregate exceed 6% of the employee's compensation, (2) the rate of matching contributions does not increase as the rate of employee contributions or elective contributions increases, (3) at any rate of employee contributions or elective contributions, the rate of matching contributions that would apply with respect to any HCE who is an eligible employee is no greater than the rate of matching contributions that would apply with respect to an NHCE who is an eligible employee and who has the same rate of employee contributions or elective contributions and (4) restrictions on employee contributions or elective contributions are limited to those permissible as described in Explanation #12, Section X, Line b? If not, the regular ACP test applies to these matching contributions. [1153]				
c. If the plan provides for discretionary matching contributions, does the plan provide that such discretionary matching contributions may not, on behalf of any employee, in the aggregate exceed an amount equal to 4% of the employee's compensation (for plan years beginning on or after January 1, 2000?) If the answer to this is no, the plan fails to satisfy the ACP test safe harbor for a plan year, and the regular ACP test applies. [1154]				
d. Does the plan (i) permit after-tax employee contributions or (ii) permit matching contributions that fail to satisfy the ACP test safe harbor? If so, the plan must apply the regular ACP test to these employee contributions and matching contributions, taking into account the special rules for the ACP test described under Explanation #11, Part VII, Line d. [1155]				
e. If the plan satisfies the ACP test safe harbor but permits one or more HCEs to make after-tax employee contributions and one or more of these HCEs are covered by a CODA of the employer that must perform the regular ADP test, does the plan meet the restrictions on multiple use under section 1.401(m)-2 of the regulations? [1156]				
f. Are matching contributions taken into account for a plan year under the ACP test safe harbor in accordance with the allocation and timing rules of section 1.401(m)-1(b)(4)(ii)(A) of the regulations? [1157]				
g. If the plan provides for a period of suspension when an employee makes a withdrawal of after-tax employee contributions, does the period of suspension of employee contributions last no longer than 12 months? [1158]				
h. (i) Are other requirements applicable to both the ADP and ACP test safe harbors met, including satisfying the aggregation and disaggregation rules, as described in Explanation #12? [1159]				

Comments